THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.26926 OF 2005

Dated: 25th April, 2006.

Between :

M/s. Dolphin Bar & Restaurant,

From 2B licence, rep. by licensee

S. Rajaiah … Petitioner

And

1. The Commissioner for Prohibition & Excise,
   Govt. of A.P., Nampally, Hyderabad and
   another. .. Respondents

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WRIT PETITION NO.26926 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the action of the respondents in demanding the licence fee for a period of 12 months w.e.f. 1-7-2005 to 30-6-2006 in spite of the fact that Form 2-B licence for establishing a Bar was granted in the middle of the excise year on 7-10-2005 as arbitrary and illegal.

The facts, in brief, are as under :

The petitioner herein made an application in accordance with the provisions of the A.P. Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short, 'the Rules') proposing to establish a Bar in the premises bearing No. 1-7-637/1 and 17-640 at Subedar, Hanmakonda. In pursuance thereof, the 1st respondent – Commissioner of Prohibition & Excise, Nampally, by proceedings, dated 7-10-2005, accorded permission under Rule 5 (3) of the Rules for grant of licence in favour of the petitioner for selling by Bar under the name and style of M/s. Dolphin Restaurant & Bar for the year 2005-06 subject to payment of licence fee and furnishing Bank Guarantee. Thereafter, the 2nd respondent granted a licence dated 19-11-2005 in favour of the petitioner which is valid upto 30-6-2006. The petitioner states that after the order of sanction granted by the 1st respondent was communicated, he had remitted Rs.5,67,500/- towards the licence fee on 14-11-

2005 and also submitted Bank Guarantee for Rs.5,67,500/- basing on the population of the Warangal Municipal Corporation in terms of the schedule to the Rules prescribing the licence fee. However, the 2nd respondent demanded payment of the licence fee for a period of 12 months w.e.f. 1-7-2005 to 30-6-2006. Though the petitioner pleaded that since the licence was granted only on 19-11-2005, he was liable to pay the proportionate licence fee, the same was not accepted by the respondents. Hence, this writ petition.

An identical question arose for consideration in W.P.No.23415 of 2005 in which the respondents filed a detailed counter-affidavit contending inter alia that as per Rule 10 of the Rules, the annual licence fee at the rates shown in the schedule appended to the Rules shall be paid before the commencement of the licence period in one lumpsum or in two equal installments or in a manner as notified from time to time. Since the Rules do not provide for payment of proportionate licence fee, the petitioner is liable to pay the annual licence fee irrespective of the fact that the licence was obtained in the middle of the licence period.

The same version has been adopted by the respondents in this writ petition also.

I have heard the learned Counsel for the petitioner and the learned Government Pleader for Prohibition & Excise appearing for the respondents.

For proper appreciation of the controversy involved, it would be necessary to refer to the relevant statutory provisions.

A.P. Excise Act, 1968 (for short “the Act”) has been enacted to consolidate and amend the law relating to the production, manufacture, possession, transport, purchase and sale of intoxicating liquor and drugs, the levy of duties of excise and countervailing, duties on alcoholic liquors for human consumption and opium, Indian hemp and other narcotic drugs and narcotics and to provide for matters connected therewith in the State of Andhra Pradesh. Section 15 of the Act provides that no person shall sell or buy any intoxicant except under the authority and in accordance

with the terms and conditions of a licence granted in that behalf. Section 17 of the Act provides for grant of exclusive privilege of manufacture, sell and etc any liquor or other intoxicant within any such area in the State as may be specified in the order. That apart, Section 28 of the Act provides that every permit issued or licence granted under the Act shall be issued or granted on payment of such fees, for such period, subject to such restrictions and conditions as may be prescribed.

In exercise of the powers conferred by Section 72, read with other Sections referred to above, Government of Andhra Pradesh initially made Rules called the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970, which in detail provided for the import, export, transport and sale of India Liquors and Foreign Liquors under different kinds of licences including Bar Licence in Form IL –17.

However, under G.O.Ms.No.1000, Revenue (EX.II) Department, dated 24.05.2005, the A.P. Indian Liquor and Foreign Liquor Rules, 1970, ceased to operate from 1.07.2005 and in its place new set of Rules by name A.P. Excise (Grant of Licences of Selling Indian Liquor and Foreign Liquor by Bar and Conditions of Licence) Rules, 2005 came into force.

Now, the question that requires consideration is whether the licensee who is granted licence for the privilege of selling by Bar under the above Rules after the commencement of the licence period of 12 months is entitled to pay the proportionate licence fees or is he liable to pay the annual licence fee for the entire period of 12 months.

At the outset, it would be appropriate to note the following provisions under the new set of Rules i.e., the Rules made under G.O.Ms.No.997, Revenue (Ex.II) Department, dated 24-05-2005.

Rule 3 (k) which defines ***License Fee*** runs as under :

"Licence Fee means annual license fee as shown in the schedule appended to these rules and includes proportionate licence fee."

Rule 3 (l) which defines ***Licence Period*** runs as under :

"Licence Period means a period of 12 months beginning from the 1st July of the year and ending with 30th of June of the succeeding year or part thereof."

Rule 3 (o) which defines ***Proportionate License Fee*** runs as under :

"Proportionate License Fee means License fee calculated proportionately to the whole months of the License period."

It is also relevant to refer to Rules 9 and 10 which run as under :

"9. Period of the Licence and commencement of business :-

(1) Every Bar shall be valid for one year commencing from 1st July, ending with 30th June, of the succeeding year, subject to payment of licence fee as prescribed.

Provided that the licence issued on or after the 1st July shall be valid upto the 30th June, of the succeeding year.

Provided that a licence granted for a part of the licence period shall be valid for such period as may be specified by the licensing authority.

Provided further that every licensee shall commence his business from 1st July, or such other date as may be specified in the licence and shall keep the Bar open every day during the hours fixed till the expiry of the licence period with sufficient stock of liquor unless the closure of the Bar is ordered by the competent authority for the period specified.

Before issue of a licence the licensee shall execute a counter part agreement in form –4B on the stamp paper of requisite value as per the provisions of the Indian Stamp Act, 1899.

10. License Fee:-

(1) The annual licence fee for the Bar shall be at the rates as shown in the Schedule appended to these rules. The annual licence fee shall be paid before commencement of the license period in one lumpsum or in two equal installments or in a manner as notified from time to time. Where the licence is issued before 1st July the 1st installment, i.e., half of the annual licence fee shall be paid into the Government Treasury through a challan before the issue of licence along with a Bank Guarantee from a Scheduled Bank situated in Andhra Pradesh in Form –3B or Fixed Deposit Receipt for an amount equal to half of the annual licence fee. The Bank Guarantee shall be valid for a period of seven months. The 2nd installment of the annual licence fee i.e., half of the annual licence fee, shall be remitted in to the Government Treasury on or before 31st December of the same year, failing which the license shall stand cancelled automatically on the expiry of such date and subject to the conditions prescribed in Form-2B.

Provided that the licensees in Form –2B shall be permitted to pay 1/3rd of the annual licence fee, together with a Bank Guarantee issued by a Scheduled Bank situated in Andhra Pradesh in Form- -3B1 or Fixed Deposit Receipt for an amount equal to 2/3rd of the annual licence fee. The 2nd and 3rd installments of the annual licence fee of 1/3rd each shall be remitted on or before 30th September and 31st December respectively, subject to payment of interest @ 18% per annum on 1/6th of annual licence fee from 1st July to 30th September of the licence period.

(2) In the event of failure to remit the installment on due date, the licence shall stand cancelled automatically and all the deposits/ Bank Guarantees shall stand forfeited to the Government.

(3) If a licence is surrendered in the middle of the licence period, the deposits and the Licence fee paid shall be forfeited to the Government.

(4) In case a licence is refused, the fee paid shall be refunded.

(5) The licence fee shall be paid into the concerned Government Treasury in the District in which the licensed premises is located.

(6) Where a licence stands cancelled or suspended for any violation of the rules and conditions of licence, the Commissioner of Prohibition and Excise may order forfeiture of the deposit / Bank Guarantee furnished by the licensee either in full or in part depending upon the nature of violation and such forfeited deposit / Bank Guarantee shall be made good by the licensee within the time fixed by the Commissioner of Prohibition and Excise. In case the licensee fails to make good the extent of forfeited deposit / Bank Guarantee within the time fixed the licence automatically stands cancelled."

As can be seen from the above definitions, the licence fee includes proportionate licence fee i.e., licence fee calculated proportionately to the licence period. It is also relevant to note that the licence period as defined under Rule 3 (l) includes even a part of the period of 12 months beginning from 1st July of the year and ending with 30th June of succeeding year. That apart, Rule 3 (o) while defining Proportionate Licence Fee specifies that the licence fee has to be calculated proportionately to the ***whole months*** of the licence period. The expression ***'whole months'*** shows that even if the licence is issued during a month, the licence fee shall be collected from the 1st of the month in which the licence is granted.

On a combined reading of the above three definitions of licence fee, proportionate licence fee and the licence period, it is clear that the licence period normally means 12 months, provided the licence is granted on or before 1st July of the year. However, there is no provision under the Rules which makes compulsive that licence shall be granted only before 1st July of the year. On the other hand, the above noted definitions which expressly included proportionate licence fees indicate that the licence can even be granted in the middle of the excise year. However, in such circumstances, the period of licence commences from the 1st of the month in which the licence is granted ending with 30th June.

Thus, it is clear that the annual licence fee for a period of 12 months as shown in the schedule appended to the Rules is applicable only where the licence is issued on or before 1st July of the year. In all other cases, the licence fee need not be for a period of 12 months, but it can be calculated proportionately with reference to the actual period of licence i.e., a part of the period of 12 months, the only restriction being that even where the licence is issued during the month, the licence fee shall be collected from 1st of the said month. Sub-rule (1) of Rule 9 which requires that Bar licence shall be valid for one year subject to payment of ***licence fee as prescribed,*** if read together with the definition of Licence Fee under Rule 3(k) makes it very clear that if the licence is granted in the middle of the year the licence fee can be collected only proportionately and not for the entire excise year of 12 months.

However, having regard to the language employed in Rule 10 of the Rules, the learned Government Pleader vehemently contended that the petitioner under no circumstances can be permitted to pay proportionate licence fee and he is bound to pay the annual licence fee for the entire period of 12 months.

It is true that Rule 10 of the Rules does not expressly provide for payment of proportionate licence fee, but only states that annual licence fee shall be at the rates as shown in the schedule. However, the law is well settled that a statute must be read as a whole and one provision of the Act or the Rules should be construed with reference to the other provisions in the same Act or Rules so as to avoid any inconsistency. Particularly, it is the duty of the Court to avoid a construction that reduces one of the provisions of a statute to a dead letter. The expression "Proportionate Licence Fee" in Rule 3 (R) & (o) and "part of licence period" in Rule 3 (l) cannot be said to have been used by the Legislature without any purpose. Therefore, the word '***annual licence fee***' employed in Rule 10, if read in the light of the definition of licence fee under Rule 3(k) read with Rule 3 (o), it is clear that it includes proportionate licence fee.

Moreover, admittedly, in the case on hand, the petitioner cannot be made responsible for grant of licence after the commencement of the excise year.

For the aforesaid reasons, I am of the opinion that the respondents are not justified in insisting on payment of licence fee for a period of 12 months notwithstanding the fact that the permission for establishment of the petitioner's Bar was accorded by the 1st respondent only on 7-10-2005.

Accordingly, Writ Petition is allowed declaring that the petitioner, who is accorded sanction for grant of Form –2B licence in the middle of the excise year, is liable to pay only proportionate Licence Fee, and with a consequential direction to the 2nd respondent to collect the licence fee accordingly as explained above. No costs.

G. ROHINI, J.

25th April, 2006.

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